

House Bill 2885

Sponsored by Representative MCLAIN; Senator RILEY (at the request of Danielle Beauvais)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Adds extended warranties to list of collateral charges for which manufacturer may need to compensate consumer when consumer returns motor vehicle that manufacturer cannot conform to manufacturer's express warranty. Requires that manufacturer replace, refund cost of or return to consumer aftermarket items installed in or on motor vehicle that manufacturer cannot conform to manufacturer's express warranty. Revises formula for calculating reasonable use allowance for motor vehicle. Allows, rather than compels, consumer to participate in informal dispute resolution with manufacturer.

A BILL FOR AN ACT

1
2 Relating to remedies for manufacturer failures to conform motor vehicles to terms of express war-
3 ranties; creating new provisions; and amending ORS 646A.400, 646A.402, 646A.404, 646A.406,
4 646A.408, 646A.412, 646A.414 and 646A.416.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** ORS 646A.400 is amended to read:

7 646A.400. As used in ORS 646A.400 to 646A.418:

8 (1) **"Aftermarket item" means an accessory or component of a motor vehicle that the**
9 **motor vehicle's manufacturer did not install or include in the motor vehicle as part of the**
10 **initial sale of the motor vehicle.**

11 [(1)] (2) **"Collateral charge" means a charge, fee or cost [to the] that a consumer incurs that**
12 **is related to the sale or lease of a motor vehicle, or related to repairing a motor vehicle the**
13 **consumer has purchased or leased, such as:**

14 (a) A sales, property or use tax;

15 (b) A license, registration or title fee;

16 (c) A finance charge;

17 (d) A prepayment penalty;

18 (e) **The cost of an extended warranty;**

19 (f) **Fees for arbitration or mediation;**

20 (g) **Expenses for towing and repairing the motor vehicle and expenses for renting a re-**
21 **placement motor vehicle;**

22 [(e)] (h) A charge for undercoating, rust-proofing or factory or dealer installed options; [and]
23 **or**

24 [(f)] (i) The cost of an aftermarket item purchased within 20 days after delivery of the motor
25 vehicle.

26 [(2)] (3) **"Consumer" means:**

27 (a) [The purchaser or lessee] **A person that, for personal, family or household purposes and**
28 **not for resale, purchases or leases**[, other than for purposes of resale, of] a new motor vehicle

NOTE: Matter in **boldfaced** type in an amended section is new; matter [italic and bracketed] is existing law to be omitted.
New sections are in **boldfaced** type.

1 [normally used for personal, family or household purposes] **or demonstrator motor vehicle;**

2 (b) Any **other** person to [whom] **which the person transfers** a new motor vehicle **or demon-**
 3 **strator motor vehicle that the person** used for personal, family or household purposes [is trans-
 4 ferred for] **and that the other person uses for** the same purposes during the duration of an express
 5 warranty [applicable to such] **that applies to the** motor vehicle; and

6 (c) Any other person entitled by the terms of [such] **the** warranty to enforce the obligations of
 7 the warranty, **including another person to which the person transfers the motor vehicle as**
 8 **described in paragraph (b) of this subsection.**

9 (4) **“Demonstrator motor vehicle” means a motor vehicle that a manufacturer or au-**
 10 **thorized dealer used for the purpose of demonstrating features of a particular model of mo-**
 11 **tor vehicle before selling the motor vehicle to a consumer.**

12 [(3)(a)] (5)(a) “Motor home” means a motor vehicle that is a new or demonstrator vehicular unit
 13 built on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab or van that
 14 becomes an integral part of the completed vehicle, and that is designed to provide temporary living
 15 quarters for recreational, camping or travel use.

16 (b) “Motor home” does not include a trailer, camper, van or vehicle manufactured by an entity
 17 that primarily manufactures motor vehicles other than motor homes as defined in this subsection.

18 (c) “Motor home” does not include [“living facility components,” which means those] items de-
 19 signed, used or maintained primarily for the living quarters portion of [the] a motor home, including
 20 but not limited to [the] flooring, plumbing fixtures, appliances, water heater, fabrics, door and fur-
 21 niture hardware, lighting fixtures, generators, roof heating and air conditioning units, cabinets,
 22 countertops, furniture and audio-visual equipment.

23 [(4)] (6) “Motor vehicle” means a passenger motor vehicle as defined in ORS 801.360 that is
 24 purchased in this state or is purchased outside this state but registered in this state.

25 **SECTION 2.** ORS 646A.402 is amended to read:

26 646A.402. [The] **A** remedy under the provisions of ORS 646A.400 to 646A.418 is available to a
 27 consumer if:

28 (1) A new motor vehicle **or demonstrator motor vehicle** does not conform to applicable
 29 manufacturer’s express warranties;

30 (2) The consumer reports [each] a nonconformity to the manufacturer, the manufacturer’s agent
 31 or the manufacturer’s authorized dealer, for the purpose of repair or correction, during the two-year
 32 period following the date of original delivery of the motor vehicle **or demonstrator motor vehicle**
 33 to the consumer or during the period ending on the date on which the mileage on the motor vehicle
 34 **or demonstrator motor vehicle** reaches 24,000 miles, whichever period ends first; and

35 (3) The manufacturer [has received] **receives** direct [written] notification from or on behalf of the
 36 consumer and has [had] an opportunity **at any time** to correct the alleged defect. “Notification”
 37 under this subsection includes, but is not limited to, a request by the consumer for an informal dis-
 38 pute settlement procedure under ORS 646A.408[.] **or a dealer’s communication concerning the**
 39 **nonconformity to a manufacturer on the consumer’s behalf.**

40 **SECTION 3.** ORS 646A.404 is amended to read:

41 646A.404. (1) If [the] a manufacturer or agents or authorized dealers of the manufacturer are
 42 unable to conform [the] a motor vehicle to an applicable manufacturer’s express warranty by re-
 43 pairing or correcting a defect or condition that substantially impairs the use, market value or safety
 44 of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer
 45 shall, **at the consumer’s election:**

1 (a) Replace the motor vehicle, **at no cost to the consumer**, with a new motor vehicle **or, if**
 2 **the consumer purchased a demonstrator motor vehicle, with an equivalent demonstrator**
 3 **motor vehicle that conforms to the manufacturer’s express warranty and is identical to or**
 4 **reasonably comparable to the motor vehicle or demonstrator motor vehicle that did not**
 5 **conform to the manufacturer’s express warranty, including with respect to any aftermarket**
 6 **items the dealer installed and any service contract that applied to the motor vehicle or**
 7 **demonstrator motor vehicle the manufacturer replaced; or**

8 (b) Accept return of the vehicle from the consumer and refund to the consumer the full purchase
 9 or lease price and collateral charges paid, less a reasonable allowance for the consumer’s use of the
 10 motor vehicle. [*In lieu of refunding, as part of the collateral charges paid, the cost of an aftermarket*
 11 *item purchased within 20 days after delivery of the motor vehicle,*] **If a consumer elects to keep an**
 12 **aftermarket item that the consumer purchased and installed in or on the motor vehicle**
 13 **within 20 days after delivery of the motor vehicle**, the manufacturer may remove the aftermarket
 14 item [*from the motor vehicle*] **and return the aftermarket item to the consumer instead of re-**
 15 **funding the cost of the aftermarket item as part of the collateral charges paid**, if the **man-**
 16 **ufacturer can remove the** aftermarket item [*can be removed*] from the motor vehicle without
 17 damage[, *and return the aftermarket item to the consumer*].

18 (2) Refunds must be made to the consumer and lienholder, if any, as the interests of the con-
 19 sumer and lienholder may appear.

20 (3)(a) As used in this section, “reasonable allowance for the consumer’s use of the motor
 21 vehicle” means:

22 (A) For a motor vehicle that is not a [*motorcycle or a*] motor home, an amount of money **that**
 23 **is equivalent to** [*the motor vehicle mileage as described in paragraph (b) of this subsection, multiplied*
 24 *by the combined amount of the cash price or lease price of the motor vehicle and the amount of any*
 25 *collateral charges paid by the consumer, and divided by 120,000*] **the product of the number of**
 26 **miles directly attributable to consumer use between the date and time on which the con-**
 27 **sumer purchased or leased the motor vehicle and the date and time of the first attempt to**
 28 **repair or correct a nonconformity that ultimately resulted in an action under subsection (1)**
 29 **of this section, multiplied by the cash price of the motor vehicle and divided by 120,000.**

30 [(B) For a motorcycle, an amount of money equivalent to the motor vehicle mileage as described in
 31 paragraph (b) of this subsection, multiplied by the combined amount of the cash price or lease price
 32 of the motorcycle and the amount of any collateral charges paid by the consumer, and divided by
 33 25,000.]

34 [(C) (B) For a motor home, an amount of money equivalent to [*the motor vehicle mileage as de-*
 35 *scribed in paragraph (b) of this subsection, multiplied by the combined amount of the cash price or*
 36 *lease price of the motor home and the amount of any collateral charges paid by the consumer, and di-*
 37 *vided by 90,000*] **the product of the number of miles directly attributable to consumer use**
 38 **between the date and time on which the consumer purchased or leased the motor home and**
 39 **the date and time of the first attempt to repair or correct a nonconformity that ultimately**
 40 **resulted in an action under subsection (1) of this section, multiplied by the cash price of the**
 41 **motor home and divided by 90,000.**

42 (b) The motor vehicle mileage for the purposes of the calculation described in paragraph [(a)]
 43 (a)(A) of this subsection is the motor vehicle’s mileage at the time the manufacturer takes an action
 44 described in subsection (1) of this section, less [*10 miles for mileage that the motor vehicle traveled*
 45 *during any period in which the consumer did not have use of the motor vehicle because the manufac-*

1 *turer or an agent or authorized dealer of the manufacturer was repairing the motor vehicle]* **any**
 2 **mileage attributable to the dealer or manufacturer during an attempt to diagnose or repair**
 3 **the motor vehicle.**

4 (4) It is an affirmative defense to a claim under ORS 646A.400 to 646A.418 that:

5 (a) An alleged nonconformity does not substantially impair such use, market value or safety; or

6 (b) A nonconformity is the result of abuse, neglect or unauthorized modifications or alterations
 7 of the motor vehicle.

8 **(5) An authorized dealer that diagnoses or repairs a consumer's motor vehicle in the**
 9 **course of attempting to conform the motor vehicle to the terms of the manufacturer's ex-**
 10 **press warranty shall provide to the consumer for each instance in which the authorized**
 11 **dealer performs a diagnosis or repair a legible, fully itemized statement or repair order that**
 12 **shows the consumer's complaint, the diagnosis or repair the dealer made and an accurate list**
 13 **of the dates on which the motor vehicle entered and left the authorized dealer's repair fa-**
 14 **cility.**

15 **(6) If a manufacturer repurchases or replaces a motor vehicle under this section, an**
 16 **authorized dealer of the manufacturer shall accept a consumer's surrender of the motor**
 17 **vehicle and shall cooperate with the manufacturer's repurchase or replacement of the motor**
 18 **vehicle.**

19 **(7) For the purposes of this section, a defect or condition in a motor home that is**
 20 **structural, including but not limited to water leaks or defective wiring, and that damages**
 21 **items that are designed, used or maintained primarily for the living quarters of the motor**
 22 **home, is a defect or condition that subjects the motor home to the remedies described in**
 23 **subsection (1) of this section.**

24 **(8) A manufacturer, or an agent or authorized dealer of a manufacturer, may not refuse**
 25 **to diagnose or repair a nonconformity in a motor vehicle that is covered by the**
 26 **manufacturer's warranty for the purpose of avoiding the provisions of ORS 646A.400 to**
 27 **646A.418.**

28 **SECTION 4.** ORS 646A.406 is amended to read:

29 646A.406. (1) *[It is presumed that]* A reasonable number of attempts have been undertaken to
 30 conform a motor vehicle to the applicable manufacturer's express warranties if[]], *during the two-year*
 31 *period following the date of original delivery of the motor vehicle to a consumer or during the period*
 32 *ending on the date on which the mileage on the motor vehicle reaches 24,000 miles, whichever period*
 33 *ends first*]:

34 (a) The manufacturer, or an agent or authorized dealer of the manufacturer, has subjected the
 35 nonconformity to repair or correction three or more times *[and has had an opportunity to cure the*
 36 *defect alleged]* **and an attempt at repair or correction occurred at least once during the two**
 37 **years after the date of the original delivery of the motor vehicle to the consumer or during**
 38 **a period that ends when the mileage on the motor vehicle reaches 24,000, but the noncon-**
 39 **formity continues to exist;**

40 (b) The motor vehicle is out of service by reason of repair or correction for a cumulative total
 41 of 30 or more calendar days or 60 or more calendar days if the vehicle is a motor home; or

42 (c) The manufacturer or an agent or authorized dealer of the manufacturer has subjected a
 43 nonconformity that is likely to cause death or serious bodily injury to repair or correction at least
 44 one time and has made a final attempt to repair or correct the nonconformity, but the nonconformity
 45 continues to exist.

1 [(2) A repair or correction for purposes of subsection (1) of this section includes a repair that must
2 take place after the expiration of the earlier of either period.]

3 [(3)] (2) The period ending on the date on which the mileage on [the] a motor vehicle reaches
4 24,000 miles, the two-year period and the 30-day period [shall] **must** be extended by any period of
5 time during which repair services are not available to the consumer because of a war, invasion,
6 strike, fire, flood or other natural disaster.

7 [(4)] (3) [The presumption described in] Subsection (1) of this section does not apply against a
8 manufacturer unless the manufacturer has received prior direct [written] notification from or on
9 behalf of the consumer [and has had an opportunity to cure the defect alleged].

10 **SECTION 5.** ORS 646A.408 is amended to read:

11 646A.408. If a manufacturer, for the purpose of settling disputes that arise under ORS 646A.400
12 to 646A.418, establishes or participates in an informal dispute settlement procedure that substan-
13 tially complies with the provisions of 16 C.F.R. part 703, as in effect on [June 23, 2009, and causes
14 a consumer to be notified of the procedure, ORS 646A.404 does not apply to a consumer who has not
15 first resorted to the procedure.] **the effective date of this 2019 Act, a consumer may choose to**
16 **participate in the procedure.** A decision resulting from arbitration [pursuant to] **in accordance**
17 **with** the informal dispute settlement procedure is binding on the manufacturer but is not binding
18 on the consumer.

19 **SECTION 6.** ORS 646A.412 is amended to read:

20 646A.412. (1) If a consumer brings an action **against a manufacturer** in court under ORS
21 646A.400 to 646A.418 [against a manufacturer] and the **court grants the** consumer [is granted] one
22 of the remedies specified in ORS 646A.404 (1) [by the court], the **court shall also award the** con-
23 sumer [shall also be awarded] up to three times the amount of any damages, not to exceed \$50,000
24 over and above the amount due the consumer under ORS 646A.404 (1), if the court finds that the
25 manufacturer did not act in good faith.

26 (2) [Except as provided in subsection (3) of this section,] The court may award reasonable attorney
27 fees, fees for expert witnesses and costs to a consumer who prevails in an appeal or action under
28 ORS 646A.400 to 646A.418. If a court finds that a consumer brought an action under ORS 646A.400
29 to 646A.418 in bad faith or solely for the purposes of harassment, the court may award a prevailing
30 manufacturer reasonable attorney fees.

31 [(3) The court may award reasonable attorney fees, fees for expert witnesses and costs to the pre-
32 vailing party in an appeal or action under ORS 646A.400 to 646A.418 that involves a motor home.]

33 **SECTION 7.** ORS 646A.414 is amended to read:

34 646A.414. (1) Except as provided in ORS **646A.404 (5) and (6) and** 646A.405, [nothing in] ORS
35 646A.400 to 646A.418 [creates] **do not create** a cause of action by a consumer against a vehicle
36 dealer.

37 (2) A manufacturer may not join a dealer as a party in a proceeding brought under ORS
38 646A.400 to 646A.418, nor may the manufacturer try to collect from a dealer damages assessed
39 against the manufacturer in a proceeding brought under ORS 646A.400 to 646A.418.

40 **SECTION 8.** ORS 646A.416 is amended to read:

41 646A.416. An action brought under ORS 646A.400 to 646A.418 must be commenced within one
42 year after whichever of the following periods ends earlier:

43 (1) The period ending on the date on which the mileage on the motor vehicle reaches 24,000
44 miles;

45 (2) The two-year period following the date of the original delivery of the motor vehicle to the

1 consumer; or

2 (3) The period that ends after an extension of time provided under ORS 646A.406 [(3)] (2).

3 **SECTION 9. The amendments to ORS 646A.400, 646A.402, 646A.404, 646A.406, 646A.408,**
4 **646A.412, 646A.414 and 646A.416 by sections 1 to 8 of this 2019 Act apply to purchases or**
5 **leases of new motor vehicles and motor homes that occur on or after the effective date of**
6 **this 2019 Act.**

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